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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEVERLY LEVINE, ET AL.,
 	
   Plaintiff,
 	
  v.
 	
GOOGLE INC.,
 	
   Defendant.
	Case No. 3:11-CV-2157-JSW
	
	PANDORA MEDIA, INC.'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF THE COURT'S JULY 25, 2011 ORDER DECLINING TO RELATE AND REASSIGN *YUNCKER V. PANDORA MEDIA, INC.* AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

IN RE: GOOGLE INC., ANDROID CONSUMER PRIVACY LITIGATION	MDL No. 2264

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1   ## NOTICE OF MOTION AND MOTION

2   **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3   **PLEASE TAKE NOTICE** that defendant Pandora Media, Inc.("Pandora") will and

4   hereby does move, pursuant to Civil L.R. 7-9, for leave to file a Motion for Reconsideration of

5   the Court's July 25, 2011 Order (Dkt. No. 21 in *Levine v. Google, Inc.*, Case No. 3:11-cv-02157-

6   JSW). That Order declined Pandora's Motion for Administrative Relief to consider whether

7   *Yuncker v. Pandora Media, Inc.*, Case No. 4:11-cv-03113-CW, should be related to the earlier-

8   filed action in *Levine v. Google, Inc.*

9   Pandora now respectfully seeks leave to file a Motion for Reconsideration of that Order

10   on the grounds of a material change in facts that has occurred since the July 25 Order, namely the

11   issuance of the United States Judicial Panel on Multidistrict Litigation's August 8, 2011 Order in

12   *In Re: Google Inc., Android Consumer Privacy Litigation* (MDL No. 2264) centralizing in this

13   Court all putative consumer privacy class actions concerning Google's Android mobile operating

14   system. Because the *Yuncker* matter was filed in the Northern District of California, into which

15   the Android MDL cases were transferred, the MDL Panel has directed that the only procedural

16   manner by which the *Yuncker* action can be assigned to the Android MDL is pursuant to the

17   Northern District's own local rules, specifically, Civil Local Rule 3-12. *See* JPMDL Rule 7.2(a);

18   MDL. No. 2264, Dkt. No. 78 at 1, n.1.

19   Under Civil Local Rule 7-9(b), a party seeking reconsideration of an interlocutory order

20   must show either (1) that "a material difference in fact or law exists from that which was

21   presented to the Court before entry of the interlocutory order … [and] that in the exercise of

22   reasonable diligence the party . . . did not know such fact or law at the time of the interlocutory

23   order," or (2) "the emergence of new material facts or a change of law occurring after the time of

24   such order." Civ. L.R. 7-9(b)(2).

25   As set forth in its Memorandum of Points and Authorities below, which would comprise

26   Pandora's Motion for Reconsideration if leave is granted to file it[1], Pandora submits that the

27   _____

28   [1] A copy of Pandora's Proposed Motion for reconsideration is attached to this Motion for Leave
     as Attachment 1.

MOTION FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER DECLINING TO
RELATE AND REASSIGN *YUNCKER V. PANDORA*

CASE NO. 11-CV-2157-JSW
MDL NO. 2264

1   JPMDL's August 8 Order centralizing the *In Re: Google Inc., Android Consumer Privacy*

2   *Litigation* (MDL No. 2264) cases in this Court constitutes the emergence of a new and material

3   factual circumstance that had not yet occurred at the time that the Court declined Pandora's

4   Administrative Motion on July 25, 2011. Whereas Pandora had previously requested the *Yuncker*

5   *v. Pandora Media, Inc.* matter to be related to *Levine v. Google, Inc.*, Pandora now seeks to

6   request that the *Yuncker* matter be centralized with the broader multidistrict litigation, which

7   currently consists of six cases and will likely include at least three additional tag-along cases.

8   **MEMORANDUM OF POINTS AND AUTHORITIES**

9   **I.   INTRODUCTION**

10   Pandora respectfully requests that this Court reconsider its July 25 Order that *Yuncker v.*

11 *Pandora Media, Inc.* was not related to *Levine v. Google Inc.* in light of the JPMDL's August 8,

12 2011 Order centralizing in this Court six putative consumer privacy class actions concerning

13 Google's Android operating system, including *Levine*. *See* Declaration of Tyler Newby, ¶ 7, Ex.

14 A. This Court's July 25 Order followed an administrative motion—brought promptly upon the

15 filing of the *Yuncker* action, but before Pandora had even retained outside counsel—that

16 addressed whether the *Yuncker* case was related to a single case against Google. *See Levine* Dkt.

17 No. 16. With the JPMDL's August 8 Order, the landscape has shifted materially. That Order

18 centralized before this Court six consumer privacy cases from three Districts, and there are

19 presently nine Android privacy cases before this Court.[2] Because it shares core factual issues,

20 legal claims and overlapping class members with the Android MDL, the *Yuncker* case is a tag

21 along case that should be ordered related to *In Re: Google Inc., Android Consumer Privacy*

22 *Litigation*.

23   As set forth in greater detail below, relation of the cases will satisfy the objectives of the

24 both the Local Rules and the MDL procedure. *First*, the cases share common factual allegations.

25 They all address the alleged use and disclosure of the same information from Google's Android

26

27 [2] On August 11, 2011, the Court issued a Conditional Transfer Order conditionally transferring
    two subsequently filed tag along actions from the Northern District of Alabama and the Southern
28 District of Florida. Newby Decl. ¶ 9, Ex. B. In addition, the *Cochran v. Google, Inc.* action was
    filed in this District and related to *Levine*.

MOTION FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER DECLINING TO   2   CASE NO. 11-CV-2157-JSW
RELATE AND REASSIGN *YUNCKER V. PANDORA*   MDL NO. 2264

1   operating system, allegedly without the knowledge or consent of Android mobile device users.

2   *Second,* the *Yuncker* and Android MDL cases raise the same legal causes of action; every cause of

3   action asserted in *Yuncker* is also raised in the Android MDL cases. The cases are all in their

4   earliest stages, and relation and centralization of the *Yuncker* case with the Android MDL now

5   would promote the efficient use of judicial and party resources through a single case management

6   and discovery schedule. Finally, relation will avoid the possibility of conflicting rulings on

7   dispositive pre-trial motions on substantially similar, if not identical, legal and factual issues.

8   **II.   FACTUAL BACKGROUND**

9   **A.   *Yuncker v. Pandora***

10   The *Yuncker* case is a putative class action asserting consumer privacy claims over the

11 operation of Pandora's Internet radio application exclusively on mobile devices using the Google

12 Android operating system. On June 23, 2011, Plaintiff filed a complaint on behalf of himself and

13 a putative class of all users of Pandora's music application on Android devices. Newby Decl. ¶ 2;

14 Dkt. No. 16, Att. 1. The complaint alleges that Pandora, through its Android application,

15 obtained, used and transferred to Google and to certain internet advertisers the Unique Device

16 Identifier ("UDID") and location data from users' Android devices, allegedly without the

17 knowledge or consent of the Android device owners. *See Id.* (*Yuncker* Compl. ¶¶ 19-24). On

18 these factual allegations, *Yuncker* asserts causes of action under the Computer Fraud and Abuse

19 Act, 18 U.S.C. § 1030; (*Yuncker* Compl. ¶¶ 34-40); California's Consumer Legal Remedies Act,

20 Cal. Civ. Code §§ 1750, *et seq.*, (*Id.* at ¶¶ 41-45); California's Computer Crime Law, Cal Penal

21 Code § 502 (*Id.* at ¶¶ 46-60); Unfair Competition, Cal. Bus. & Prof. Code § 17200 (*Id.* at ¶¶ 61-

22 68); Trespass to Personal Property (*Id.* at ¶¶ 69-73); Conversion (*Id.* at ¶¶ 74-77); and Unjust

23 Enrichment (*Id.* at ¶¶ 68-81).

24   **B.   The *In Re: Google Inc. Android Consumer Privacy Litigation* Cases**

25   The *Yuncker* matter proceeds contemporaneously with at least nine consumer privacy

26 class action complaints filed against Google, Inc. concerning disclosure of user information to

27 Google and advertising entities through the Android operating system. On August 8, 2011, the

28 JPMDL granted Google's motion pursuant to 28 U.S.C. § 1407 to transfer and centralize in this

1 Court six of the Android privacy cases, including *Levine v. Google, Inc.* Newby Decl.¶ 8, Ex. A.

2 On August 11, 2011, the JPMDL issued a Conditional Transfer Order conditionally transferring

3 to this Court two putative consumer privacy class actions concerning Google Android that had

4 been filed in the Northern District of Alabama and the Southern District of Florida. *See* Newby

5 Decl. ¶ 9, Ex. B.

6   All of the Android MDL complaints seek to establish a class consisting of owners or users

7 of Android mobile devices. *See Brown* Compl. ¶ 20; *Levine* Compl. ¶ 77; *King* Compl. ¶ 52;

8 *Urias* Compl. ¶ 35; *Pessano* Compl. ¶ 40; *Lipton* Compl. ¶ 27; *Jeffreys* Compl. ¶ 27; *Cochran*

9 Compl. ¶ 71; *Smith* Compl ¶ 72. The complaints in at least four of the Android MDL cases allege

10 that Google—either on its own, or in concert with developers of applications that run on Android

11 devices (such as Pandora)—collects, uses and discloses information from the Android device,

12 namely, the UDID and location information. The complaints in these cases further allege that

13 these acts were done without the Android device users' consent. *See Pessano* Compl. ¶ 22; *King*

14 Compl. ¶ 1; *Levine* Compl. ¶ 18(e); *Cochran* Compl. ¶ 12(e); *Smith* Compl. ¶ 13(e). The

15 complaints in several of these actions allege that Google is itself liable for the applications' (such

16 as Pandora's) disclosure of information due to Google's purported duty to prevent unauthorized

17 disclosure of information on the Android system and Google's failure to notify users of the

18 disclosure of their information. *Levine* Compl. ¶ 18; *Smith* Compl. ¶ 13; *Cochran* Compl. ¶ 12.

19   All of the Android MDL complaints allege that:

20   • plaintiffs purchased or used mobile devices that run on the Android operating system;

21   • the Android operating system on its own, or applications installed on Android devices

22   collected UDID and/or location information from the device;

23   • the Android operating system on its own, or applications installed on Android devices,

24   transferred information to Google and/or to third parties; and

25   • the collection, use or transfer of device information took place without users' consent.

26 *See Brown* Compl ¶¶ 3-4, 8-11; *Levine* Compl. ¶¶ 14-17, 25-26, 40, 47; *King* Compl. ¶¶ 12, 19,

27 28, 29, 34; *Urias* Compl. ¶¶ 2-4, 26, 27; *Pessano* Compl. ¶¶ 1, 12-14, 25, 26; *Lipton* Compl. ¶¶ 4,

28 11-14; *Cochran* Compl. ¶¶ 11-12, 15, 17-18; *Smith* Compl. ¶¶ 12-13, 16, 18-20; *Jeffreys* Compl.

MOTION FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER DECLINING TO   4   CASE NO. 11-CV-2157-JSW
RELATE AND REASSIGN *YUNCKER V. PANDORA*   MDL NO. 2264

1   ¶¶ 4, 8-17. All of the cases assert claims under the CFAA, 18 U.S.C. § 1030. In addition, every

2   cause of action asserted against Pandora is asserted in at least one—if not most—of the other

3   Android MDL complaints.

4   **C.   Procedural History**

5   Following service of this action on Pandora, on July 1, 2011, Pandora filed an

6   Administrative Motion in this Court pursuant to Civil L.R. 3-12, seeking an order relating the

7   *Yuncker* case with *Levine*, which Plaintiff opposed. At that time, which was prior even to

8   Pandora's engagement of outside counsel, Pandora's Administrative Motion sought relation only

9   to the *Levine* action. At that time, Google's Motion to Transfer numerous other similar putative

10 consumer privacy class actions concerning the Android operating system and the applications that

11 run on it was pending before the JPMDL. However, Google's motion was not heard by the

12 JPMDL until July 28, 2011. Meanwhile, on July 25, 2011, this Court issued a form Order finding

13 that the *Yuncker* and *Levine* cases were not related, without further explanation.

14   On July 12, 2011, Pandora notified the MDL Panel in *In re: Google Inc. Android*

15 *Consumer Privacy Litigation*, MDL Docket No. 2264 that the *Yuncker* action was a related action

16 to the other cases involving the Android consumer privacy issues, pursuant to MDL Rules of

17 Procedure, Rule 6.2. Plaintiffs opposed that notice. Dkt. No. 20. In its August 8 Order, the

18 JPMDL ruled that an Android MDL would be formed, and that it would proceed in the Northern

19 District of California before this Court. Newby Decl. ¶ 8, Ex. A. Because the *Yuncker* case had

20 been filed in the transferee district for the Android MDL, the JPMDL did not rule on Pandora's

21 notice of related action, but directed that, under the JPMDL Rules, Pandora should seek

22 assignment to the MDL judge in this district in accordance with this district's local rules. *See id.,*

23 August 8 Order at 1, n.1.

24 **III.   ARGUMENT**

25   **A.   Legal Standard for Transfer of Potential Tagalong Case**

26   As noted in the JPMDL's August 8 Order, as a potential tagalong case that was filed in the

27 same district in which the Android MDL cases were centralized, "A party should request

28 assignment of such actions to the Section 1407 transferee judge in accordance with applicable

1   local rules." JPMDL Rule 7.2(a); August 8 Order at 1, n.1. The Northern District's Civil Local

2   Rule 3-12 establishes the procedure for seeking an order finding that a later-filed action is

3   "related" to an earlier-filed action. Cases are "related" when:

4   **(1)** The actions concern substantially the same parties, property,
                transaction or event; and

5

6   **(2)** It appears likely that there will be an unduly burdensome duplication
                of labor and expense or conflicting results if the cases are conducted
                before different Judges.

7

    Civil L.R. 3-12(a).

8

9   This standard is analogous to the standard for transferring multidistrict litigation cases to a

10 single judge for coordination or consolidation as set forth in 28 U.S.C. § 1407. Under that statute,

11 the JPMDL may transfer cases to a single court where the cases (1) involve "common questions

    of fact"; (2) transfer would be convenient for the parties and witnesses; and (3) transfer would

12 "promote the just and efficient conduct" of the cases. 28 U.S.C. § 1407(a). "The objective of

13 transfer is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce

14 litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the

15 courts." Manual for Complex Litigation, Fourth, § 20.131 (2004).

16   **B.   The *Yuncker* Case Is Related to the Android MDL Cases and Case
17   Management Should Be Coordinated**

18   **1.   The *Yuncker* and Android MDL Cases Concern Substantially the
                        Same Parties, Property, Transactions and Events.**

19   The *Yuncker* case involves substantially the same parties, property and events as the

20 Android MDL actions.

21   *First*, all of the cases involve the same alleged core "property" interests – location

22 information and/or UDID information from Android devices in which class members have

23 asserted privacy interests. Similarly, all cases involve the use of the Android operating system

24 and the means by which location information and other user data is allegedly collected and

25 transferred to third parties.

26   *Second*, the harm claimed by *Yuncker*—collection, storage and transfer of information

27 about Pandora Android application users—is a subset of the harm in the Android MDL cases,

28

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1   which claim harm from collection, storage and transfer of user data for various unnamed

2   applications including, but not limited to, Pandora. Indeed, paragraph 1 of the *Yuncker* complaint

3   alleges:

4   This action challenges Pandora's practice of collecting the personal information of its
        users and then disseminating it to third-party advertising libraries, such as Google's
5   AdMob.

6   Dkt No. 1, ¶ 1. The same disclosure of information to third party advertising services and to

7   Google by Pandora and other applications is the subject of the claims in the other MDL cases.

8   *Pessano* Compl. ¶ 22; *King* Compl. ¶ 1; *Levine* Compl. ¶ 18(e); *Cochran* Compl. ¶ 12(e); *Smith*

9   Compl. ¶ 13(e).

10   *Third,* the complaints allege common legal theories, including violations of the Computer

11 Fraud and Abuse Act, the California Computer Crime Law, and California's Unfair Competition

12 Law, Cal. Bus. & Prof. Code § 17200 *et seq*. Every cause of action alleged in the *Yuncker* case

13 is also raised in one or more of the Android MDL cases:

14

15 • **Computer Fraud and Abuse Act:** *Levine* Compl. ¶¶ 88–106; *King* Compl. ¶¶ 66–77;
    Urias Compl. ¶¶ 40–46; *Lipton* Compl. ¶¶ 39–44; *Brown* Compl. ¶¶ 43–48; *Jeffreys*
16 Compl. ¶¶ 39–44; *Pessano* Compl. ¶¶ 88–100; *Cochran* Compl. ¶¶ 82-100; *Smith*
    Compl. ¶¶ 83-101;

17 • **California Consumer Legal Remedies Act:** *Levine* Compl. ¶¶ 159–68; *Urias* Compl.
    ¶¶ 47–51; *Cochran* Compl. ¶¶ 153-62;
18

19 • **California Penal Code § 502:** *Levine* Compl. ¶¶ 124–42; *King* Compl. ¶¶ 78–96;
    Urias Compl. ¶¶ 52–67; *Pessano* Compl. ¶¶ 147–155; *Cochran* Compl. ¶¶ 118-136;

20 • **California Unfair Competition Law, Bus. & Prof. Code § 17200:** *Levine* Compl.
    ¶¶ 169–81; *King* Compl. ¶¶ 109–20; *Urias* Compl. ¶¶ 68–74; *Lipton* Compl. ¶¶ 68–86;
21 *Pessano* Compl. ¶¶ 165–195; *Cochran* Compl. ¶¶ 163-175;

22 • **Trespass:** *Levine* Compl. ¶¶ 211–22; *King* Compl. ¶¶ 97–108; *Urias* Compl. ¶¶ 75–
    79; *Cochran* Compl. ¶¶ 205-216; *Smith* Compl. ¶¶ 148-59;
23

24 • **Conversion:** *Levine* Compl. ¶¶ 199–203; *Urias* Compl. ¶¶ 86–91; *Cochran* Compl.
    ¶¶ 193-197; *Smith* Compl. ¶¶ 136-140;

25 • **Unjust Enrichment:** *Levine* Compl. ¶¶ 223–35; *Urias* Compl. ¶¶ 80–85; *Jeffreys*
    Compl. ¶¶ 60–68; *Pessano* Compl. ¶¶ 216–224; *Cochran* Compl. ¶¶ 217-229; *Smith*
26 Compl. ¶¶ 160-172.

27 These common issues of fact and law suggest that discovery and defendants' dispositive motions

28

1 will address overlapping issues, such as what data Defendants actually collect, to whom it is

2 distributed, and whether Plaintiffs pleaded adequately every element of the same causes of action.

3   *Fourth*, the cases involve the same parties by virtue of their putative class members. All

4 of the MDL cases are brought on behalf of owners or users of Android devices; the *Yuncker*

5 putative class is simply a subset of Android device users who downloaded the Pandora

6 application. Thus, every member of the putative *Yuncker* class is, by definition, also a member of

7 the putative classes in the MDL case, seeking relief for the same harm.

8   In opposing Pandora's first notice of related action, Plaintiff raised several arguments that

9 no longer carry weight now that the *Levine* matter has been centralized with other Android MDL

10 cases in this Court. First, he contends the cases are distinct because his case focuses only on the

11 Pandora Android application, while the other cases challenge Google's conduct in the operation

12 of the Android operating system. *See* Newby Decl. ¶ 5 (Dkt. No. 20). Specifically, Plaintiff

13 asserts that the principal issue in the *Yuncker* action will be whether or not Pandora has secured

14 its users' consent to disclose their information in the ways that information is allegedly passed on

15 to Google and other advertising services. But even that issue overlaps entirely with the other

16 Android actions. If Pandora has adequately secured its users' consent to the disclosure of

17 information that has occurred through the Pandora Android application, then not only Pandora,

18 but also Google, will be insulated from Plaintiff's claims by that consent. Conversely, to the

19 extent that Google has secured Android users' consent to disclosures either to itself or to a third

20 party of the information at issue, that would likewise insulate Pandora for such disclosures. Thus,

21 even the consent issue presents common questions that should be consistently resolved in all

22 actions.

23   Moreover, the underlying allegations of liability, for both Google and Pandora, will

24 depend on the interaction between the Pandora application and the Android operating system, the

25 nature of the data available to Pandora from the Android operating system, and the nature of

26 information provided through these systems to Google and the advertising services. For example,

27 Yuncker alleges that Google's AdMob advertising library contains consumers' personal

28 information, including their birthday, gender, and postal code information, collected through

1   Pandora. *Yuncker* Compl. ¶ 21, 23. Yuncker also alleges that Android mobile devices transmit

2   consumers' unique device identifier to Pandora, which passes them on to the advertising services.

3   *Yuncker* Compl. ¶ 22–23. Complaints in the *King*, *Levine*, *Urias, Cochran* and *Smith* cases raise

4   nearly identical claims., claiming that the identical disclosures impose liability on Google. It is

5   thus certain that discovery as to what information was passed to whom, by what mechanism, and

6   to what use, will overlap and that Pandora and Google will have similar defenses.

7   While Plaintiff contends that the cases are not related because they name different

8   defendants, that is not the standard set forth in Civil L.R. 3-12, which looks only to whether the

9   actions concern *substantially* the same parties, property *or* events. In the MDL transfer context,

10 courts have transferred cases for coordination where, like here, there were overlapping plaintiffs,

11 but different defendants. For example, in *In re: CBS Licensing Antitrust Litig.*, 328 F. Supp. 511,

12 511-12 (J.P.M.L. 1971), the JPMDL transferred antitrust complaints against different defendants

13 for coordination before a single court where complaints were substantially similar and involved

14 the legality of the same type of licensing agreements. The Panel there relied upon its finding that

15 centralization before a single District Court Judge would contribute toward the convenience of the

16 parties and witnesses and the just and efficient conduct of the litigation.

17   As another analogy, the fact that a putative class of plaintiffs chooses to sue a parts

18 supplier separately from a car manufacturer on allegations of the same malfunction would hardly

19 mean that the claim against the supplier should not be coordinated in the MDL addressing that

20 malfunction. The same logic applies to recommend coordination here.

21   **2.   There is a Substantial Risk of Unduly Burdensome Duplication of
                        Labor and Expense, or of Conflicting Results, if the *Yuncker* Case is
22   not Related to the Android MDL.**

23   Relation of the cases will also avoid the unduly burdensome duplication of labor and

24 expense both on the part of the Courts and the parties that would occur if *Yuncker* and Android

25 MDL cases were to proceed separately. The cases are in their earliest stages, and no party has

26 responded to a complaint in any case. Coordinating case management and discovery of these

27 cases at the outset will ensure that motions to dismiss, discovery, class certification, and

28 dispositive motions will be coordinated in terms of timing, investment of effort, and consistency

1   of decision before a single Court. Indeed, relating *Yuncker* to the Android MDL will satisfy the

2   intentions of MDL transfers of ensuring that tag-along actions are managed in an efficient manner

3   by a single judge. *See* United States Judicial Panel on Multidistrict Litigation, Rule 7.1 & Rule

4   7.2; *In re Metoprolol Succinate Patent Litig.*, 329 F. Supp. 2d 1368, 1370 (J.P.M.L. 2004)

5   ("Section 1407 will have the salutary effect of assigning the present actions and any future tag-

6   along actions to a single judge who can formulate a pretrial program that ensures that pretrial

7   proceedings will be conducted in a manner leading to the just and expeditious resolution of all

8   actions to the overall benefit of the parties and the courts.").

9   Relation will eliminate the need for duplicative discovery and allow this Court to set a

10   single schedule for fact discovery on identical issues. Because both *Yuncker* and the Android

11   MDL cases make allegations that information about users of the Android devices, including

12   UDID and location information, was shared with third parties, including advertising networks, it

13   is likely that fact discovery will take place into what these third parties receive, and how they

14   treat any data they receive. Similarly, discovery into identical aspects of the Android operating

15   system is likely to take place in all cases. Relation of the cases will help ensure the parties need

16   not waste resources and time unnecessarily in taking the same discovery twice. While Yuncker's

17   counsel has made a salutary offer to coordinate informally pre-trial discovery with the other

18   Android MDL cases, the various parties in the MDL cases, not to mention non-party witnesses,

19   may have different interests. And in all events, there is no reason to believe that coordination

20   would work *better* where the matters proceed separately on two judges' calendars with different

21   motion schedules, discovery deadlines, protective orders, and rulings on the scope of discovery.

22   Relation will also ensure consistent pretrial rulings on dispositive motions addressing the

23   overlapping causes of action raised in the *Yuncker* and Android MDL cases. It would be highly

24   inefficient for two courts in the same district to issue potentially conflicting rulings on the same

25   causes of action arising out of substantially similar core facts concerning the Android OS and

26   applications that run on that OS. There should, for example, be only one decision as to whether

27   Pandora and Google's notification and receipt of consent from users is sufficient for the

28   disclosures at issue, not disparate rulings.   Such a risk of conflicting pre-trial rulings on

MOTION FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER DECLINING TO   10
RELATE AND REASSIGN *YUNCKER V. PANDORA*

CASE NO. 11-CV-2157-JSW
MDL NO. 2264

1   dispositive motions is a ground for centralizing cases before a single MDL judge. *See, e.g., In re*

2   *Baycol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001) (centralization promotes

3   the just and efficient conduct of litigation where it "prevent[s] inconsistent pretrial rulings,

4   including with respect to class certification").

5   Relation will also promote judicial efficiency. At a minimum, any Court will need to

6   become familiar with all Plaintiffs' allegations about what the Android operating system does, as

7   well as the legal standards for numerous causes of action relating to those allegations, before it

8   may rule on potentially dispositive motions to dismiss. To the extent these cases proceed beyond

9   the pleadings stage, a Court will need to become even more familiar with the operation of the

10 Android OS, how applications interact with the OS, and the types of notice provided to users of

11 Android devices concerning information collected by applications. Coordinating these issues

12 before a single judge, rather than multiple judges, will promote judicial efficiency.

13   **CONCLUSION**

14   For all of the foregoing reasons, Pandora Media respectfully requests leave to file a

15 Motion for Reconsideration of the Court's July 25, 2011 Order declining to relate and reassign

16 *Yuncker v. Pandora Media, Inc.*

17 Dated: August 15, 2011   Respectfully Submitted,

18   */s/ Laurence F. Pulgram*

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21   PANDORA MEDIA, INC.

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